



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Office of the Regional Administrator

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Ken McQueen *Ken McQueen*
Regional Administrator

DATE: February 21, 2020

TO: Andrew R. Wheeler
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and the Region's ethics team and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the President's Ethics Pledge that I signed.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 United States Code (U.S.C.) § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I understand that I am recused from participating personally and substantially in any particular matter that will have a direct and predictable effect on the ability and willingness of companies in which I have corporate or municipal bonds and debt obligations to honor its obligations, or that could affect a bond rating. I have been advised that it is highly unlikely that I will participate in such matters as the Regional Administrator; therefore, I do not expect that my disqualification requirement with regard to these financial interests will impact my ability to perform my official duties.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770, THE ETHICS PLEDGE

Pursuant to Section 1, Paragraph 6 of the Ethics Pledge, I understand that I am prohibited from participating in any particular matter involving specific parties in which **Kenergy Consulting LLC** or **Sonoran Energy Partners**, my “former employers,” is a party or is representing a party, and my former clients, **Permian Oilfield Partners** and **Foundation Energy Management, LLC**, to which I provided services during the two years before joining federal service, is a party or represents a party. Under the terms of the Ethics Pledge, these recusal requirements last for two years from the date that I joined federal service, or until August 4, 2021.

I have been advised by OGC/Ethics that, for the purposes of this Ethics Pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties representing a diversity of viewpoints. If a representative of my former employer or former client is present, then I understand that at least four other parties should be present before I may participate to ensure that a diversity of viewpoints is represented and not the same united perspective.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

As an executive branch employee, I understand that I am also subject to the federal impartiality standards at 5 Code of Federal Regulations § 2635.502(a). Although I no longer have a “covered relationship” with the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) because my employment ended more than one year ago, I have agreed to disqualify myself from participating in any particular matters involving specific parties pending at EPA in which I participated personally and substantially as an EMNRD employee. Currently, I am not aware of any such pending specific party matters involving EMNRD that require my disqualification.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters covered by my recusal statement, I will instruct the Deputy Regional Administrator to assist in screening EPA matters that would otherwise come to my attention. Anyone with questions regarding matters covered by my recusals should direct them to the Deputy Regional Administrator without my knowledge or involvement. If the Deputy Regional Administrator determines that a particular matter will directly involve any of the entities listed on my recusal list, then he will refer it for action or assignment to another person without my knowledge or involvement. If he is unsure whether a matter is covered by my recusal, then he will consult with OGC/Ethics and/or the Region’s ethics team for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics or the Region's ethics team, when necessary, I will revise my recusal statement if there is a change in my financial interests, personal or business relationships, or my EPA duties. I will provide a copy of the revised recusal statement to you, OGC/Ethics, and my principal subordinates.

cc: David W. Gray, Deputy Regional Administrator
I-Jung Chiang, Acting Chief of Staff
Patricia Welton, Acting Regional Counsel
Terry Leddon, Assistant Deputy Ethics Official, Region 6
Justina Fugh, Director, Ethics Office

	(b) (6), (b) (5) [REDACTED]	(b) (6), (b) (5) [REDACTED]	
Impartiality Determination	Will allow you to work on specific party matters with New Mexico	Please think about any specific party matters that you worked on personally and substantially with EPA while at NM. We will need to consider whether you should recuse from those or if we can consider letting you work on them.	Shannon Griffo
New Employee Ethics Training	Regulatory requirement, lasts one hour. You and EPA Ethics can talk about any specific party matters that you worked on personally and substantially while in NM that you anticipate wanting to work on as the RA	David Gray, your Deputy Regional Administrator, is setting up the session with EPA Ethics. During this time, you will also sign the Trump Ethics Pledge.	Ferne Mosley and Victoria Clarke

I hope you are excited about joining EPA! We're looking forward to working with you!

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Ken McQueen](#)
Cc: [Clarke, Victoria](#); [Ross, Margaret](#)
Subject: follow up -- certificates of divestiture
Date: Monday, July 01, 2019 1:02:00 AM
Attachments: [CD Regulation - Subpart J.pdf](#)
[let's get started!.msg](#)

Hello again,

Ryan Jackson and I talked late last week, and he wanted me to be sure to reach out to you to explain that the certificate of divestiture will not obviate your need to pay capital gains; rather, it will just defer your tax liability until later. What will happen is that Victoria and Margaret will assist you in putting together the information needed for us to request that the Office of Government Ethics (another federal agency) issues you a certificate of divestiture to direct you to sell your (b) (6) (after you join EPA) and then to purchase something else (e.g., a diversified mutual fund), all within 90 days. You will present the CD with your taxes to show that you are not required to pay the capital gains tax at the time of the sale. Instead, the requirement to pay the capital gains on the (b) (6) will be deferred until you sell whatever you bought.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Ken McQueen](#)
Cc: [Ross, Margaret](#); [Clarke, Victoria](#)
Subject: let's get started!
Date: Wednesday, June 26, 2019 8:30:00 PM
Attachments: [CD Regulation - Subpart J.pdf](#)

Hi there,

Allow me to introduce you virtually to Margaret Ross and Victoria Clarke, both of EPA Ethics, who will be working with you to get the ball rolling on the certificate of divestiture. There are specific regulations to follow (sigh), which means a form or two. One of the forms required for the CD request is the public financial disclosure report that you'll complete electronically. You can't escape this form: even if you weren't seeking a CD, you would still have to do this wretched and exacting form because of your position with the Agency. If it's any consolation, nearly 500 senior leaders in EPA have to fill out this form each year, so you'll have a lot of company. In addition to the public financial disclosure report (what we call the 278e), you'll also need to provide specific information about the stocks that you'll be selling. Margaret and Victoria already have the emails that you and I exchanged, so they know how many shares you own, but they may need to be in touch with you for other information. They are THE BEST so you'll be in terrific hands!

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)]
Sent: Tuesday, June 25, 2019 7:40 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Hello again from EPA Ethics!

Justina,
I'm fine with proceeding with anticipatory paperwork

Sent from my iPhone

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statement of the information required to be reported according to the provisions of this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

[57 FR 11826, Apr. 7, 1992, as amended at 71 FR 28239, May 16, 2006]

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

SOURCE: 69 FR 44894, July 28, 2004, unless otherwise noted.

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and estab-

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lishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

Eligible person means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

Permitted property means:

(1) An obligation of the United States; or

(2) A diversified investment fund. A diversified investment fund is a diversified mutual fund or diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);

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(3) Provided, however, a permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive order. As a result, requirements applicable to specific agencies and positions may limit an eligible person's choices of permitted property. An employee seeking a Certificate of Divestiture should consult the appropriate designated agency ethics official to determine whether a statute, regulation, rule, or Executive order may limit choices of permitted property.

§ 2634.1004 General rule.

(a) The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property in accordance with the procedures of § 2634.1005 of this subpart if:

(1) The Director determines that divestiture of the property by an eligible person is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; or

(2) A congressional committee requires divestiture as a condition of confirmation.

(b) The Director of the Office of Government Ethics cannot issue a Certificate of Divestiture for property that already has been sold.

Example 1 to § 2634.1004: An employee is directed to divest shares of stock, a limited partnership interest, and foreign currencies. If the sale of these assets will result in capital gains under the Internal Revenue Code, the employee may request and receive a Certificate of Divestiture.

Example 2 to § 2634.1004: An employee of the Department of Commerce is directed to divest his shares of XYZ stock acquired through the exercise of options held in an employee benefit plan. His gain from the sale of the stock will be treated as ordinary income. Because only capital gains realized under Federal tax law are eligible for deferral under section 1043, a Certificate of Divestiture cannot be issued for the sale of the XYZ stock.

Example 3 to § 2634.1004: During her Senate confirmation hearing, a nominee to a Department of Defense (DOD) position is directed to divest stock in a DOD contractor as a condition of her confirmation. Eager to comply with the order to divest, the nominee sells her stock immediately after the hearing and prior to being confirmed by the Senate. Once she is a DOD employee, she requests a Certificate of Divestiture for the stock. Because the Office of Government

Ethics cannot issue a Certificate of Divestiture for property that has already been divested, the employee's request for a Certificate of Divestiture will be denied.

Example 4 to § 2634.1004: After receiving a Certificate of Divestiture, the spouse of a Food and Drug Administration employee sold stock in a regulated company. Between the time of the request for the Certificate of Divestiture and the sale of the stock, the stock price dropped and the spouse sold the stock at a loss. Because the sale of the stock did not result in capital gains, the spouse has no need for the Certificate of Divestiture and cannot submit it to the Internal Revenue Service for deferral of gains. No further action need be taken by the employee or the employee's spouse in connection with the Certificate of Divestiture.

§ 2634.1005 How to obtain a Certificate of Divestiture.

(a) *Employee's request to the designated agency ethics official.* An employee seeking a Certificate of Divestiture must submit a written request to the designated agency ethics official at his or her agency. The request must contain:

(1) A full and specific description of the property that will be divested. For example, if the property is corporate stock, the request must include the number of shares for which the eligible person seeks a Certificate of Divestiture;

(2) A brief description of how the eligible person acquired the property;

(3) A statement that the eligible person holding the property has agreed to divest the property; and

(4)(i) The date that the requirement to divest first applied; or

(ii) The date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements.

(b) *Designated agency ethics official's submission to the Office of Government Ethics.* The designated agency ethics official must forward to the Director of the Office of Government Ethics the employee's written request described in paragraph (a) of this section. In addition, the designated agency ethics official must submit:

(1) A copy of the employee's latest financial disclosure report. If the employee is not required to file a financial disclosure report, the designated agency ethics official must obtain from the employee, and submit to the Office

of Government Ethics, a listing of the employee's interests that would be required to be disclosed on a confidential financial disclosure report excluding gifts and travel reimbursements. For purposes of this listing, the reporting period is the preceding twelve months from the date the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property;

(2) An opinion that describes why divestiture of the property is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; and

(3) A brief description of the employee's position or a citation to a statute that sets forth the duties of the position.

(c) *Divestitures required by a congressional committee.* In the case of a divestiture required by a congressional committee as a condition of confirmation, the designated agency ethics official must submit appropriate evidence that the committee requires the divestiture. A transcript of congressional testimony or a written statement from the designated agency ethics official concerning the committee's custom regarding divestiture are examples of evidence of the committee's requirements.

(d) *Divestitures for property held in a trust.* In the case of divestiture of property held in a trust, the employee must submit a copy of the trust instrument, as well as a list of the trust's current holdings, unless the holdings are listed on the employee's most recent financial disclosure report. In certain cases involving divestiture of property held in a trust, the Director may not issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

Example 1 to paragraph (d): An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. (See 5 CFR 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.)

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

§ 2634.1006 Rollover into permitted property.

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

Example 1 to paragraph (a): A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

Example 2 to paragraph (a): The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in such securities. However, she may invest the proceeds in a diversified mutual fund. See the definition of *permitted property* at § 2634.1003.

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

§ 2634.1007 Cases in which Certificates of Divestiture will not be issued.

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at 5 CFR part 2640 need not be divested for a Certificate of Divestiture to be issued.

Example 1 to paragraph (b): A Department of Agriculture employee owns shares of

stock in Better Workspace, Inc. valued at \$25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to \$15,000 of the stock under the regulatory exemption for interests in securities at 5 CFR 2640.202(a). He would be able to request a Certificate of Divestiture for the \$10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a Certificate of Divestiture for the entire \$25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above \$15,000 again.

(c) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

§ 2634.1008 Public access to a Certificate of Divestiture.

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603 of this part.

APPENDIX A TO PART 2634—CERTIFICATE OF INDEPENDENCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

The Certificate of Independence required by § 2634.406(b) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), the undersigned proposed [Trustee] [_____] of such trust is a financial institution which is eligible to serve in such fiduciary capacity in accordance with section 102(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

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() a bank, as defined in 12 U.S.C. 1841(c), or

() an investment adviser, as defined in 15 U.S.C. 80b-2(a)(11),

not more than 10 percent of which is owned or controlled by a single individual.

SECOND: The undersigned—

(1) Is independent of and unassociated with any interested party so that the undersigned cannot be controlled or influenced in the administration of the trust by any interested party; and

(2) is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with any interested party.

THIRD: Any director, officer, or employee of the undersigned—

(1) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(2) Is not and has not been employed by any interested party, nor a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(3) Is not a relative of any interested party.

FOURTH: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____

(firm) _____

By: _____

(title) _____

NOTE: See Appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

[57 FR 11829, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998]

APPENDIX B TO PART 2634—CERTIFICATE OF COMPLIANCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

The Certificate of Compliance required by § 2634.408(b) shall be executed as follows:

CERTIFICATE OF COMPLIANCE

With respect to the qualified blind trust (qualified diversified trust) of _____ (Settlor), the undersigned, the approved [Trustee] [_____] of such trust, pursuant to 5 CFR 2634.406, has served in such fiduciary capacity during the calendar year [or for the period beginning _____ and ending _____] and is eligible to continue in such capacity by virtue of the following:

FIRST: The undersigned (and any director, officer, or employee) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(i) for a qualified blind trust, and 5 CFR 2634.404(c)(12)(i) for a qualified diversified trust), or the trust instrument;

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, applicable statute, regulation, or the terms of the trust instrument;

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(iii) for a qualified blind trust and 5 CFR 2634.404(c)(12)(iii), for a qualified diversified trust), or the trust instrument;

(D) fail to file any document required by title I of the Act, the implementing regulations (including 5 CFR 2634.408(b) and (c)), or the trust instrument; or

(E) violate or fail to comply with any provision or requirement of title I of the Act, the implementing regulations, or the trust instrument.

SECOND: The undersigned (and any director, officer, or employee) will not knowingly or negligently engage in the above-mentioned activities.

THIRD: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____

(firm) _____

By: _____

(title) _____

NOTE: See appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

[57 FR 11830, Apr. 7, 1992; 57 FR 21855, May 22, 1992]

APPENDIX C TO PART 2634—PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICES FOR APPENDIXES A AND B

PRIVACY ACT STATEMENT

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act") (5 U.S.C. App.) and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on this certificate is for review by Government officials of OGE and the agency of the Government employee for whom the trust is established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information on this certificate may be made:

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(1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act;

(2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation;

(3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;

(4) to a source when necessary to obtain information relevant to a conflict of interest issue;

(5) to the National Archives and Records Administration or the General Services Administration in records management inspections;

(6) to the Office of Management and Budget during legislative coordination on private relief legislation; and

(7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter.

Knowing or willful falsification of information on this certificate or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

PUBLIC BURDEN INFORMATION AND PAPERWORK REDUCTION ACT STATEMENT

This collection of information is estimated to take an average of twenty minutes per response. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy Director for Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. *Do not* send your completed certificate to that official; rather, send it to the Director of the Office of Government Ethics at that address as provided in the part 2634 regulation.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0007, is displayed here and in the headings of the OGE model qualified trust certificates of independence and com-

pliance, appendixes A and B to this part 2634).

[57 FR 11830, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998; 67 FR 22349, May 3, 2002]

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.

- 2635.101 Basic obligation of public service.
- 2635.102 Definitions.
- 2635.103 Applicability to members of the uniformed services.
- 2635.104 Applicability to employees on detail.
- 2635.105 Supplemental agency regulations.
- 2635.106 Disciplinary and corrective action.
- 2635.107 Ethics advice.

Subpart B—Gifts From Outside Sources

- 2635.201 Overview.
- 2635.202 General standards.
- 2635.203 Definitions.
- 2635.204 Exceptions.
- 2635.205 Proper disposition of prohibited gifts.

Subpart C—Gifts Between Employees

- 2635.301 Overview.
- 2635.302 General standards.
- 2635.303 Definitions.
- 2635.304 Exceptions.

Subpart D—Conflicting Financial Interests

- 2635.401 Overview.
- 2635.402 Disqualifying financial interests.
- 2635.403 Prohibited financial interests.

Subpart E—Impartiality in Performing Official Duties

- 2635.501 Overview.
- 2635.502 Personal and business relationships.
- 2635.503 Extraordinary payments from former employers.

Subpart F—Seeking Other Employment

- 2635.601 Overview.
- 2635.602 Applicability and related considerations.
- 2635.603 Definitions.
- 2635.604 Disqualification while seeking employment.
- 2635.605 Waiver or authorization permitting participation while seeking employment.

From: [Fugh, Justina](#)
To: [Chiang, I-Jung](#)
Date: Wednesday, August 14, 2019 1:03:00 PM
Attachments: [Ken McQueen Signed Impartiality Determination 8 5 19.pdf](#)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

AUG - 5 2019

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of New Mexico

FROM: Justina Fugh *justina fugh*
Alternate Designated Agency Ethics Official

TO: Ken McQueen
Regional Administrator
Region 6

As the Regional Administrator for Region 6 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of New Mexico. Within the last year, prior to being selected for this position, you served as Cabinet Secretary of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your State of New Mexico employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of New Mexico.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Senior Advisor for Water, you have a "covered relationship" with the State of New Mexico pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from EMNRD, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New Mexico is

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of Region 6 and part of the Agency's political team. Your area of responsibility includes New Mexico, as well as Arkansas, Louisiana, Oklahoma, and Texas. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including New Mexico, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of New Mexico with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with EMNRD. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From 2016 through 2018, you served as Cabinet Secretary for the New Mexico Energy, Minerals and Natural Resources Department. In this significant leadership role, you led the Department responsible for protecting and conserving New Mexico's natural and energy resources, and provided policy direction for EMNRD and its six divisions (Oil Conservation, Energy Conservation and Management, Mining and Minerals, State Forestry, State Parks, and Administrative Services). Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for EMNRD. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and

enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of New Mexico. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – New Mexico will constitute a significant portion of your portfolio since your area of responsibility covers Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. In your role as Regional Administrator, you are expected to communicate freely with states in Region 6, including New Mexico.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for EMNRD that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of New Mexico, but not on the very same specific party matters on which you worked on personally and substantially while employed by EMNRD. With respect to those particular matters involving New Mexico as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of New Mexico with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New Mexico. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as

voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: David Gray, Deputy Regional Administrator, Region 6
James Payne, Regional Counsel, Region 6
Erin E. Chancellor, Chief of Staff, Region 6
Terry Leddon, Regional Ethics Counsel, Region 6

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Cc: [Clarke, Victoria](#); [Mosley, Ferne](#)
Subject: mcqueen impartiality determination
Date: Tuesday, July 30, 2019 5:57:00 PM
Attachments: [final impartiality determination 7-30-19.docx](#)

Here's the last version, reformatted a little so that the cc's were not the only thing on the last page. I printed out an original and signed it, and left it on my conference table.

From: Griffo, Shannon
Sent: Monday, July 29, 2019 3:19 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Subject: RE: note that I sent to R6 about their new RA

Attached is a draft impartiality determination for Ken McQueen -

- Justina will review, make changes, and sign before she leaves. (b) (5)

[REDACTED]

- (b) (5)
- [REDACTED]

(b) (5)

[REDACTED]

Thanks,
Shannon

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061

Griffo.Shannon@epa.gov

From: Fugh, Justina

Sent: Friday, July 26, 2019 4:22 PM

To: OGC Ethics <OGC_Ethics@epa.gov>

Subject: note that I sent to R6 about their new RA

Hi there,

I expect that the new RA in Region 6 will start while I'm on vacation, so I talked to Victoria about what will need to happen:

- New employee training – I asked the Region to contact Ferne and Victoria so that they can do it together or sort out who will do it. For RAs, I've tried to do them by Skype, but conference calls also work. Be sure to get his signature on the Trump ethics pledge. (b) (5)

- Impartiality determination – He's going to need one to work with New Mexico, his former employer and a state in Region 6. I've asked Victoria to work with Shannon on this. It'll need to be signed by me (but not dated until after he starts) or you'll need Cozad's signature on it.

- Certificate of Divestiture – Victoria and Margaret are on this. (b) (5)

(b) (5)
(b) (5). Contact person at OGE is Elaine Newton at (b) (6), and you will send it to cd@oge.gov

- New Entrant 278 – Margaret assigned him one using his personal email address but he hasn't started it yet. (b) (5). I don't know who they are, and they will need to be included in his recusal statement

- (b) (5)

I'm inclined to ask Victoria to shepherd this project but ask that Ferne and Shannon be available to help out and lend support as needed. Okay with everyone?

Justina

From: Fugh, Justina

Sent: Friday, July 26, 2019 4:08 PM

To: Payne, James <payne.james@epa.gov>; Gray, David <gray.david@epa.gov>

Cc: Leddon, Terry <Leddon.Terry@epa.gov>

Subject: your new RA

Hi there,

I'm going to be (b) (6) but realize that you are expecting your new RA, Ken McQueen, very soon, perhaps as early as August 5 (effective date of 8/4/19). I am writing to let you know that OGC/Ethics has been working with Mr. McQueen already. Here is my quick outline of his ethics situation:

NEW EMPLOYEE ETHICS BRIEFING

- In his first week, please ensure that your new RA is scheduled for a new employee ethics briefing with OGC/Ethics. If you want to schedule that session in his first few days, then please contact Ferne Mosley and Victoria Clarke. They can do the one-hour briefing together and also ensure that Mr. McQueen signs the Trump Ethics Pledge.

LOSS OF IMPARTIALITY

- OGC/Ethics will write an impartiality determination to permit the new RA to work with his former employer, the state of New Mexico. That should be ready to go on his first day, so you will be able to brief him on specific party matters in which NM is a party.

FINANCIAL INTERESTS: Anticipated Issues

- Prior to joining EPA, he intends to (b) (6), (b) (5)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- After he joins EPA, (b) (6), (b) (5)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- He can be briefed on matters of general applicability that affect the downstream petroleum sector.

RECUSAL STATEMENT

- OGC/Ethics will also write the recusal statement but because Mr. McQueen's assets will change, we will (b) (5)
[REDACTED]
[REDACTED]
[REDACTED]
- In addition to the financial assets, we will include any former employers and former

clients on his recusal list: Kenergy and its clients to whom he provided consulting services, plus Sonora Energy Partners.

I hope this is helpful to you!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Ken McQueen](#)
Subject: RE: A quick summary, for your reference
Date: Monday, July 22, 2019 11:52:00 AM

You're super direct, Ken, which is admirable in an ethics client! Yes, in order to (b) (6), (b) (5)

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)]
Sent: Monday, July 22, 2019 11:46 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: A quick summary, for your reference

So bottom line, best to (b) (6), (b) (5)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, July 22, 2019 9:39 AM
To: Ken McQueen (b) (6)
Subject: RE: A quick summary, for your reference

Hi there,
If you still hold (b) (6) on August 4, then you'll need to be recused from that sector until you dispose of them. In other words, it's okay to hold onto the assets so long as you faithfully recuse. So you do have some time to (b) (6). We'll just keep you recused from that sector until then. Oh, and if you get rid of them after you become an EPA employee, then you will have to file a 278T (a periodic transaction report), which is not a big deal, just a technical reporting issue.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)
Sent: Monday, July 22, 2019 11:09 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: A quick summary, for your reference

Justina,

(b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, July 17, 2019 11:42 AM
To: Ken McQueen (b) (6)
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: A quick summary, for your reference

Hi there,

I thought it might be useful for you to get a quick summary of what EPA Team Ethics needs. We really want to help bring you to EPA as soon as possible!

YOUR HOLDINGS	EPA ETHICS SAYS...
(b) (6), (b) (5)	[REDACTED]
[REDACTED]	[REDACTED]

(b) (6), (b) (5)

[REDACTED]

11/11/2016

11/11/2016

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

113

[illegible]

[illegible]

Age Group	Percentage of Respondents
18-29	80%
30-49	75%
50-64	70%
65+	60%

[REDACTED]

A horizontal bar chart titled 'U.S. should take action against the Islamic State' showing the percentage of respondents who believe the U.S. should take action. The chart is divided into two main categories: 'All respondents' and 'U.S. born respondents'. Each category is further divided into 'Men' and 'Women'. The bars are color-coded: blue for Men and orange for Women. The y-axis represents the percentage, ranging from 0 to 100. The x-axis represents the percentage of respondents.

Category	Gender	Percentage
All respondents	Men	88%
	Women	78%
	Men	88%
	Women	89%
U.S. born respondents	Men	35%
	Women	89%
	Men	82%
	Women	86%
Foreign born respondents	Men	89%
	Women	94%
	Men	94%
	Women	94%

[illegible]

From: [Fugh, Justina](#)
To: [Chiang, I-Jung](#)
Subject: RE: Ethics/conflict question re Ken McQueen
Date: Tuesday, August 13, 2019 6:08:00 PM

Sure.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Chiang, I-Jung
Sent: Tuesday, August 13, 2019 6:00 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Ethics/conflict question re Ken McQueen

Justina,

Do you have a few minutes tomorrow for me run a meeting that Ken may attend here in the Region through you? Thanks.

I-Jung Chiang
Office of the Regional Administrator
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
214.665.2160
chiang.i-jung@epa.gov

(b) (6)

I indicated to you that one option is to divest, which can be accomplished through a certificate of divestiture that we would seek after you become an employee. This CD will allow an employee (not a prospective employee) to sell the conflicting property that would have generated a capital gain, buy something else (likely a diversified mutual fund) and defer any capital gain tax consequences. There are limitations to this remedy, though, such as the fact that it won't apply to your underwater options. I've attached a pamphlet that explains the program a little more.

- You indicated that you are (b) (6)
- (b) (6)
- (b) (6)
- Given your description of your assets, I anticipate that you will present some financial conflicts that we will have to resolve, either through recusal (areas in which you will not be permitted to participate) or divestiture/forfeit of the options. We'll obviously need to talk further and carefully about how to proceed. I'm only letting you know that I anticipate an issue, not yet suggesting the path forward.

TRUMP ETHICS PLEDGE

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we have to go back two years, which means that you have two entities to mention: the State of New Mexico and Kenergy Consulting LLC, as well as any consulting clients of yours. You do not have any fiduciary board positions and are not a federally registered lobbyist.
- Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves Kenergy Consulting LLC or any of your clients as a party or in which they represent a party. You will not be permitted to meet with Kenergy Consulting or any of your clients or interact with them in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which Kenergy Consulting or any of your clients is a party or represents a party. You will also not be able to attend any meeting at which anyone representing Kenergy Consulting or any of your clients is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides the representative of Kenergy Consulting or any of your clients.
- With regard to your former state employment, please note that this provision of the pledge does not apply to states or local governments. So, for New Mexico, we will

instead rely on the federal impartiality standards that establish a one year cooling off period with the state. Because the RA in Region 6 must interact with New Mexico, which is one of the states in the region, we anticipate that will write an impartiality determination to allow you to participate in New Mexico matters. We have done this sort of impartiality determination for other Regional Administrators, including Anne Idsal.

RECUSALS

- I anticipate that your recusal statement will address New Mexico (to some extent, until the impartiality determination is issued), Kenergy Consulting LLC, and any clients of Kenergy. In addition, we will have to address your ownership interests and the financial conflicts.

That's my quick overview, but I tried not to burden you with attachments or citations. I can provide you more information if you want, though, so just ask!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)
Sent: Monday, June 10, 2019 10:01 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Greetings from EPA Ethics!

Justina,
Thanks for the info....a lot to absorb.

In your description below, (b) (6)

(b) (6)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, June 9, 2019 12:04 AM
To: (b) (6)
Subject: FW: Greetings from EPA Ethics!

I really should not send messages this late at night! Sorry for the oversight in the text, which I have corrected below (in red).

From: Fugh, Justina

Sent: Sunday, June 09, 2019 1:45 AM

To: Ken McQueen (b) (6)

Subject: Greetings from EPA Ethics!

Hi there,

Thanks for talking to me on Friday. It was a pleasure to chat with you, and I'm sorry that this note took a little longer to get to you than I had hoped. As I explained, I'm here to help explain the ethics rules that will apply to you should you join EPA as the Regional Administrator in Region 6, which is a non-career SES position. Generally speaking, you'll be subject to two interrelated but different ethical constructs: (1) the federal ethics laws and regulations, and (2) the Trump Ethics Pledge as set forth by Executive Order 13,770 (see attached). This note will provide you with the broad brush strokes of what I envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

- You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, stock options, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a wretched and exacting document that you will fill out electronically. To give you an idea of what we'll be asking, I've attached a paper version, but we're not yet asking you to fill it out.

- From our discussion, you are (b) (6)

[REDACTED]

I indicated to you that one option is to divest, which can be accomplished through a certificate of divestiture that we would seek after you become an employee. This CD will allow an employee (not a prospective employee) to sell the conflicting property that would have generated a capital gain, buy something else (likely a diversified mutual fund) and defer any capital gain tax consequences. There are limitations to this remedy, though, such as the fact that it won't apply to your underwater options. I've attached a pamphlet that explains the program a little more.

- You indicated that you are (b) (6)

[REDACTED]

(b) (6)

- [REDACTED]
- Given your description of your assets, I anticipate that you will present some financial conflicts that we will have to resolve, either through recusal (areas in which you will not be permitted to participate) or divestiture/forfeit of the options. We'll obviously need to talk further and carefully about how to proceed. I'm only letting you know that I anticipate an issue, not yet suggesting the path forward.

TRUMP ETHICS PLEDGE

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we have to go back two years, which means that you have two entities to mention: the State of New Mexico and Kenergy Consulting LLC, as well as any consulting clients of yours. You do not have any fiduciary board positions and are not a federally registered lobbyist.
- Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves Kenergy Consulting LLC or any of your clients as a party or in which they represent a party. You will not be permitted to meet with Kenergy Consulting or any of your clients or interact with them in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which Kenergy Consulting or any of your clients is a party or represents a party. You will also not be able to attend any meeting at which anyone representing Kenergy Consulting or any of your clients is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides the representative of Kenergy Consulting or any of your clients.
- With regard to your former state employment, please note that this provision of the pledge does not apply to states or local governments. So, for New Mexico, we will instead rely on the federal impartiality standards that establish a one year cooling off period with the state. Because the RA in Region 6 must interact with New Mexico, which is one of the states in the region, we anticipate that will write an impartiality determination to allow you to participate in New Mexico matters. We have done this sort of impartiality determination for other Regional Administrators, including Anne Idsal.

RECUSALS

- I anticipate that your recusal statement will address New Mexico (to some extent, until the impartiality determination is issued), Kenergy Consulting LLC, and any clients of Kenergy. In addition, we will have to address your ownership interests and the financial

conflicts.

That's my quick overview, but I tried not to burden you with attachments or citations. I can provide you more information if you want, though, so just ask!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Ken McQueen](#)
Subject: Greetings from EPA Ethics!
Date: Sunday, June 09, 2019 1:45:00 AM
Attachments: [P45 Executive Order.pdf](#)
[paper 278e.pdf](#)
[Smooth Sales Pamphlet.pdf](#)

Hi there,

Thanks for talking to me on Friday. It was a pleasure to chat with you, and I'm sorry that this note took a little longer to get to you than I had hoped. As I explained, I'm here to help explain the ethics rules that will apply to you should you join EPA as the Regional Administrator in Region 6, which is a non-career SES position. Generally speaking, you'll be subject to two interrelated but different ethical constructs: (1) the federal ethics laws and regulations, and (2) the Trump Ethics Pledge as set forth by Executive Order 13,770 (see attached). This note will provide you with the broad brush strokes of what I envision as your ethical obligations.

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(b) (6)

- [REDACTED]
- Given your description of your assets, I anticipate that you will present some financial conflicts that we will have to resolve, either through recusal (areas in which you will not be permitted to participate) or divestiture/forfeit of the options. We'll obviously need to talk further and carefully about how to proceed. I'm only letting you know that I anticipate an issue, not yet suggesting the path forward.

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- Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves Kenergy Consulting LLC or any of your clients as a party or in which it represents a party. You will not be permitted to meet with Koch or interact with Koch in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which Koch is a party or represents a party. You will also not be able to attend any meeting at which Koch is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides Koch.
- With regard to your former state employment, please note that this provision of the pledge does not apply to states or local governments. So, for New Mexico, we will instead rely on the federal impartiality standards that establish a one year cooling off period with the state. Because the RA in Region 6 must interact with New Mexico, which is one of the states in the region, we anticipate that will write an impartiality determination to allow you to participate in New Mexico matters. We have done this sort of impartiality determination for other Regional Administrators, including Anne Idsal.

RECUSALS

- I anticipate that your recusal statement will address New Mexico (to some extent, until the impartiality determination is issued), Kenergy Consulting LLC, and any clients of Kenergy. In addition, we will have to address your ownership interests and the financial conflicts.

That's my quick overview, but I tried not to burden you with attachments or citations. I can provide you more information if you want, though, so just ask!

Justina

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The White House
Office of the Press Secretary
For Immediate Release
January 28, 2017

Executive Order: ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES

EXECUTIVE ORDER

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ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2017, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.

"2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.

"3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

"4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political

party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

"6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

"7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

"8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service."

Sec. 2. Definitions. As used herein and in the pledge set forth in section 1 of this order:

(a) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(b) "Appointee" means every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) "Covered executive branch official" shall have the definition set forth in the Lobbying Disclosure Act.

(d) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(e) "Executive agency" and "agency" mean "executive agency" as defined in section 105 of title 5, United States Code, except that the terms shall include the Executive Office of the President, the United States Postal Service, and the Postal Regulatory Commission, and excludes the Government Accountability Office. As used in paragraph 1 of the pledge, "executive agency" means the entire agency in which the appointee is appointed to serve, except that:

(1) with respect to those appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the appointee ceased to serve in that department or agency; and

(2) an appointee who is detailed from one executive agency to another for more than 60 days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(f) "Foreign Agents Registration Act of 1938, as amended" means sections 611 through 621 of title 22, United States Code.

(g) "Foreign government" means the "government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611(e).

(h) "Foreign political party" has the same meaning as that term has in section 1(f) of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611(f).

(i) "Former client" is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(j) "Former employer" is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that "former employer" does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(k) "Gift"

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3), (j), (k), and (l) of title 5, Code of Federal Regulations.

(l) "Government official" means any employee of the executive branch.

(m) "Lobbied" shall mean to have acted as a registered lobbyist.

(n) "Lobbying activities" has the same meaning as that term has in the Lobbying Disclosure Act, except that the term does not include communicating or appearing with regard to: a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.*

(o) "Lobbying Disclosure Act" means sections 1601 *et seq.* of title 2, United States Code.

(p) "Lobbyist" shall have the definition set forth in the Lobbying Disclosure Act.

(q) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child, or parent.

(r) "Particular matter" shall have the same meaning as set forth in section 207 of title 28, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(s) "Particular matter involving specific parties" shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(t) "Participate" means to participate personally and substantially.

(u) "Pledge" means the ethics pledge set forth in section 1 of this order.

(v) "Post-employment restrictions" shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(w) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

(x) Terms that are used herein and in the pledge, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

(y) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2017.

Sec. 3. Waiver. (a) The President or his designee may grant to any person a waiver of any restrictions contained in the pledge signed by such person.

(b) A waiver shall take effect when the certification is signed by the President or his designee.

(c) A copy of the waiver certification shall be furnished to the person covered by the waiver and provided to the head of the agency in which that person is or was appointed to serve.

Sec. 4. Administration. (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; and

(2) to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this Executive Order are made available for use by agencies in fulfilling their duties under section 4(a);

(2) in consultation with the Attorney General or Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate:

(i) to carry out the foregoing responsibilities;

(ii) to apply the lobbyist gift ban set forth in paragraph 5 of the pledge to all executive branch employees;

(iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations; and

(vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 8 of the pledge is honored by every employee of the executive branch;

(d) An appointee who has signed the pledge is not required to sign the pledge again upon appointment or detail to a different office, except that a person who has ceased to be an appointee, due to termination of employment in the executive branch or otherwise, shall sign the pledge prior to thereafter assuming office as an appointee.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or civil judicial proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from engaging in lobbying activities with respect to that agency for up to 5 years in addition to the 5-year time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action on behalf of the United States against the former officer or employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former officer or employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former officer or employee arising out of any breach or attempted breach of the pledge signed by the former officer or employee.

Sec. 6. General Provisions. (a) This order supersedes Executive Order 13490 of January 21, 2009 (Ethics Commitments by Executive Branch Personnel), and therefore Executive Order 13490 is hereby revoked. No other prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) The pledge and this order are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party (other than by the United States) against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

(e) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

DONALD J. TRUMP

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets and Income

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period. The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

OGE Form 278e (March 2014)

Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U. S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

SMOOTH SALES

A BEGINNER'S GUIDE TO CERTIFICATES OF DIVESTITURE

Introduction

If you are an executive branch employee of the Federal Government or plan to become one, at some point you may have to sell certain assets to avoid a conflict of interest or the appearance of a conflict. Under tax rules, the sale of an asset may cause you to have a taxable capital gain which must be reported to the Internal Revenue Service. However, to make it easier for you and your family to comply with ethics rules, the tax laws provide that before you sell your asset, the Director of the Office of Government Ethics (OGE) may issue a Certificate of Divestiture (called a CD) which will allow you to defer the capital gains tax. The CD does not eliminate the capital gains tax; it simply defers payment of the tax to some future date.

The Office of Government Ethics is the agency that administers the CD program. The Director of OGE issues CDs to employees through their designated agency ethics officials.

This pamphlet provides an overview of the CD program. It contains answers to some questions often asked by employees who are required to divest property because of a conflict of interest. This pamphlet does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should consult your designated agency ethics official.

Frequently Asked Questions

Can I get a CD any time I sell property?

No. A CD can be obtained only if:

- ☐ you have not yet sold the property;
- ☐ the sale is required to eliminate or prevent a conflict of interest;
- ☐ there would be a capital gain; and
- ☐ the request is submitted through your designated agency ethics official and approved by the Director of OGE.

Requests for CDs are considered on a case-by-case basis and may not always be approved. If your request involves a complicated situation, such as when the property to be sold is held in a trust, you should talk to your designated agency ethics official or OGE as soon as possible.

Who is eligible for a CD?

- ☐ Officers and employees of the executive branch of the Federal Government, except a person who is a "special Government employee," as defined in 18 U.S.C § 202;
- ☐ The spouse or minor or dependent child of such persons; and
- ☐ Under certain circumstances, a trustee holding property in a trust.

How do I apply for a CD?

☐ You must make a written request to your designated agency ethics official that includes a commitment to divest within a specified time period.

☐ Your designated agency ethics official then sends your request to the Director of OGE with:

- 1 a description of the property to be sold;
- 2 a statement from your designated agency ethics official indicating that the divestiture is necessary; and
- 3 if you file a financial disclosure report, a copy of your report. If you do not file a financial disclosure report, your designated agency ethics official must submit a memorandum that contains the information required to be disclosed in such a report.

What are the time requirements for requesting a CD?

- ☐ If you are divesting property because of an ethics agreement, your designated agency ethics official must submit your request and the required materials to OGE within three months of the date of the ethics agreement.
- ☐ If you are selling property required to be divested by statute, regulation, or executive order, your designated agency ethics official must submit your request and the required materials to OGE within

three months and ten days after the requirement becomes applicable.

What should I do once I receive the CD?

You must sell the property described in the CD within the required time frame and reinvest in so-called “permitted property” within 60 days, including the date of sale. Keep the Certificate and file it with IRS Form 8824 along with your Federal income tax return for the year in which the sale took place.

In what “permitted property” must I reinvest?

- ☐ United States obligations, such as Treasury bills, bonds, and notes; or
- ☐ open-end diversified mutual funds.

Note that when you sell permitted property or a United States obligation matures, you will incur the capital gains tax that was deferred.

Where can I learn more about CDs?

You can consult with your designated agency ethics official or OGE

with any questions regarding CDs or the CD program. However, since your agency ethics official and OGE cannot provide you with tax advice, you should ask your personal tax advisor, accountant, or attorney if you have questions about the tax implications of a CD. They can find detailed information at:

- ☐ Section 1043 of the Internal Revenue Code of 1986; and
- ☐ Regulations starting at 5 C.F.R. § 2634.1001.

SMOOTH SALES

A BEGINNER’S GUIDE TO CERTIFICATES OF DIVESTITURE



U.S. Office of Government Ethics

From: [Ross, Margaret](#)
To: [Ken McQueen](#); [Fugh, Justina](#); [Clarke, Victoria](#)
Subject: RE: Hello again from EPA Ethics!
Date: Thursday, August 1, 2019 3:11:00 PM

Thanks! We'll update our materials for your certificate of divestiture request.

Best,
Margaret

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone 202-564-3221 |work cell 202-527-0432

From: Ken McQueen (b) (6)
Sent: Thursday, August 1, 2019 9:32 AM
To: Ross, Margaret <Ross.Margaret@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Margaret,
I wanted to circle back on (b) (6)

(b) (6)

(b) (6)

(b) (6)

Please let me know if you have any other questions.

From: Ross, Margaret <Ross.Margaret@epa.gov>
Sent: Wednesday, July 17, 2019 10:10 AM
To: Ken McQueen (b) (6); Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Greetings, all. I just wanted to provide a quick update.

I've created a profile for Mr. McQueen in Integrity, and I've assigned him a new entrant report. He should have received a notification from Integrity in his email about his report assignment just a few minutes ago. The report is currently assigned as due 8/16, which is 30 days from today. However, the report is actually not due until 30 days after Mr. Queen's appointment/start date, and it is my understanding that Mr. McQueen does not have an official start date yet. If that is the case, I assume that once he has a firm start date, if he has not yet filed his report, that the due date will be updated to reflect 30 days after that start date. Is that correct?

The most critical thing we need to know in order to begin preparing for the Certificate of Divestiture from the Office of Government Ethics is whether any of (b) (6)

[illegible]

[illegible]

(b) (6), (b) (5) [Redacted] [Redacted] [Redacted]	[Redacted] [Redacted] [Redacted] [Redacted]
[Redacted] [Redacted]	[Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
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[Redacted] [Redacted] [Redacted] [Redacted] [Redacted]	[Redacted] [Redacted] [Redacted] [Redacted]

All the best to you,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)

Sent: Sunday, June 23, 2019 11:26 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: RE: Hello again from EPA Ethics!

Justina,

I got your VM, I have been (b) (6) so

I'm trying to catch up on emails today.

(b) (6)

(b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Wednesday, June 19, 2019 6:35 PM

To: Ken McQueen (b) (6)

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: Hello again from EPA Ethics!

Hi there,

I left you a voice mail message but am following up with an email. I'll be taking a couple of days off so will return to the office on Monday. But I will be checking email periodically, so we can communicate that way if need be.

Earlier today, I updated Ryan Jackson, copied here, on our recent conversation. I

indicated to him that you do (b) (6), (b) (5)

Well, that answer depends on whether your stock ownership exceeds the regulatory exemption levels and what you decide to do with your ownership interests.

- If you own less than \$15,000 worth of publicly traded stock in any company, you could still work on specific party matters that involve that company;
- If you own less than \$25,000 worth of publicly traded stock in any company, you can still work on particular matters of general applicability that affect the sector;
- If you own any stock options, vested or unvested, then you don't qualify for the regulatory exemptions anyway.
- If you exceed the regulatory thresholds and still want to (b) (6), (b) (5)

- If you will get any capital gains, then I've explained that you should wait until we secure a certificate of divestiture (see attached pamphlet) that will allow you to defer the tax consequences. If, however, you will not get any capital gain, or the assets are already in a tax deferred account, then we can't obtain a CD for you.

So the next step is for you to tell me, please, what you will do with (b) (6)

That information will help us provide you and Ryan with a best guess as to how to frame a recusal statement for you.

Thanks in advance,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Clarke, Victoria](#)
To: [Ken McQueen](#); [Ross, Margaret](#); [Fugh, Justina](#)
Subject: RE: Hello again from EPA Ethics!
Date: Tuesday, July 23, 2019 10:04:00 AM

Hi Ken!

Margaret and I are working on your CD package. One thing that we need to know is how you acquired (b) (6) but we thought we'd confirm the circumstances out of an abundance of caution.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Ken McQueen (b) (6)
Sent: Wednesday, July 17, 2019 4:12 PM
To: Ross, Margaret <Ross.Margaret@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Margaret,
The (b) (6)

My start date in Dallas is 8/5/2019.

From: Ross, Margaret <Ross.Margaret@epa.gov>
Sent: Wednesday, July 17, 2019 10:10 AM
To: Ken McQueen (b) (6); Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Greetings, all. I just wanted to provide a quick update.

I've created a profile for Mr. McQueen in Integrity, and I've assigned him a new entrant report. He should have received a notification from Integrity in his email about his report assignment just a few minutes ago. The report is currently assigned as due 8/16, which is 30 days from today. However, the report is actually not due until 30 days after Mr. Queen's appointment/start date, and it is my understanding that Mr. McQueen does not have an official start date yet. If that is the case, I assume that once he has a firm start date, if he has not yet filed his report, that the due date will be updated

[illegible]

20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)
Sent: Sunday, June 23, 2019 11:26 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Justina,
I got your VM, I have been (b) (6), so
I'm trying to catch up on emails today.

(b) (6)
[Redacted]

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(b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Wednesday, June 19, 2019 6:35 PM

To: Ken McQueen (b) (6)

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: Hello again from EPA Ethics!

Hi there,

I left you a voice mail message but am following up with an email. I'll be taking a couple of days off so will return to the office on Monday. But I will be checking

email periodically, so we can communicate that way if need be.

Earlier today, I updated Ryan Jackson, copied here, on our recent conversation. I indicated to him that you do (b) (6), (b) (5)

[REDACTED]

[REDACTED] Well, that answer depends on whether your stock ownership exceeds the regulatory exemption levels and what you decide to do with your ownership interests.

- If you own less than \$15,000 worth of publicly traded stock in any company, you could still work on specific party matters that involve that company;
- If you own less than \$25,000 worth of publicly traded stock in any company, you can still work on particular matters of general applicability that affect the sector;
- If you own any stock options, vested or unvested, then you don't qualify for the regulatory exemptions anyway.
- If you exceed the regulatory thresholds and still want to (b) (6), (b) (5)

[REDACTED]

- [REDACTED]

[REDACTED] If you will get any capital gains, then I've explained that you should wait until we secure a certificate of divestiture (see attached pamphlet) that will allow you to defer the tax consequences. If, however, you will not get any capital gain, or the assets are already in a tax deferred account, then we can't obtain a CD for you.

So the next step is for you to tell me, please, what you will do with (b) (6)

[REDACTED]. That information will help us provide you and Ryan with a best guess as to how to frame a recusal statement for you.

Thanks in advance,
Justina

20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Jackson, Ryan](#)
Cc: [Ken McQueen](#)
Subject: RE: Hello again from EPA Ethics!
Date: Tuesday, June 25, 2019 6:08:00 PM
Attachments: [request for CD template.docx](#)
[Smooth Sales Pamphlet.pdf](#)

Correct. The official terminology is this: the government allows the employee to defer paying capital gains tax on the property sold in order to comply with conflict of interest requirements. After receiving the CD, Mr. McQueen will sell the stock and then have 60 days to purchase a "permitted" property, such as diversified mutual funds. Attached is the CD pamphlet I had shared with Mr. McQueen earlier as well as the template that we'll have to fill out to request the CD. We don't seek CDs very often, but when we do, it's fairly routine. Assuming we have all of the paperwork, should take under 2 weeks to clear the Office of Government Ethics.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Jackson, Ryan
Sent: Tuesday, June 25, 2019 5:45 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Ken McQueen (b) (6) >
Subject: Re: Hello again from EPA Ethics!

The certificate of divestiture is a pretty routine thing, however, of course it value is avoidance of capital gains because of divesting due to accepting a position in the federal government, right Justina?

Sent from my iPad

On Jun 25, 2019, at 4:35 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,
Thanks for getting back with me. I was unexpectedly out of the office on Monday, but am back and raring to go today! I'm a visual learner, so I've taken your information and made a little chart so you can see how I suggest we proceed:

YOUR HOLDINGS	JUSTINA'S COMMENTS
(b) (6), (b) (5)	

(b) (6), (b) (5)

[REDACTED]

Response	Percentage
Yes, the U.S. should take action to reduce greenhouse gas emissions	95%
No, the U.S. should not take action to reduce greenhouse gas emissions	5%

Gender	Percentage
Men	10%
Women	15%

Bar Index	Approximate Length (Relative)
1	100%
2	85%
3	70%
4	100%
5	95%
6	60%
7	75%

[REDACTED]

[illegible]

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
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<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	<div>(b) (6), (b) (5) [REDACTED]</div>
<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
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<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>

(b) (6), (b) (5)	

All the best to you,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Ken McQueen (b) (6)
Sent: Sunday, June 23, 2019 11:26 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Justina,
I got your VM, I have been (b) (6), so
I'm trying to catch up on emails today.

(b) (6)

(b) (6)

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]
[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Wednesday, June 19, 2019 6:35 PM

To: Ken McQueen (b) (6)

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: Hello again from EPA Ethics!

Hi there,

I left you a voice mail message but am following up with an email. I'll be taking a couple of days off so will return to the office on Monday. But I will be checking email periodically, so we can communicate that way if need be.

Earlier today, I updated Ryan Jackson, copied here, on our recent conversation. I indicated to him that you do (b) (5), (b) (6)

[REDACTED]

Well, that answer depends on whether your stock ownership exceeds the regulatory exemption levels and what you decide to do with your ownership interests.

- If you own less than \$15,000 worth of publicly traded stock in any company, you could still work on specific party matters that involve that company;
- If you own less than \$25,000 worth of publicly traded stock in any company, you can still work on particular matters of general applicability that affect the sector;
- If you own any stock options, vested or unvested, then you don't qualify for the regulatory exemptions anyway.
- If you exceed the regulatory thresholds and still want to (b) (5), (b) (6)

[REDACTED]

- [REDACTED]

[REDACTED] If you will get any capital gains, then I've explained that you should wait until we secure a certificate of divestiture (see attached pamphlet) that will allow you to defer the tax consequences. If, however, you will not get any capital gain, or the assets are already in a tax deferred

account, then we can't obtain a CD for you.

So the next step is for you to tell me, please, what you will do with (b) (6)

That information will help us provide you and Ryan with a best guess as to how to frame a recusal statement for you.

Thanks in advance,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

REQUEST FOR A CERTIFICATE OF DIVESTITURE
(to be completed by the agency, not by the requesting employee)

requesting employee and position title:	employing agency and component:
agency point of contact:	telephone number for agency point of contact:
signature of Designated Agency Ethics Official:	date:

The text boxes supplied below will expand to accommodate your responses. For complete instructions on requesting a Certificate of Divestiture, please review 5 C.F.R. part 2634, subpart J.

1. Provide the requested information about the property being divested and the owner(s) of that property. Indicate whether each property owner is one of the following: (a) a government employee; (b) a spouse, a minor child or a dependent child of a government employee; or (c) a trustee of a trust for the benefit of an eligible person. For stock, provide the number of shares of stock owned. For a partnership, provide the percentage of the partnership owned.

description of the property	quantity or percentage owned	owner(s) of the property	relationship to the employee
McDonald's Corp	57 shares	John A Jones	self
Play Toys, LP	12 24% interest		
General Electric, Co	251 shares	John A Jones (joint)	self
		Mary B Jones	spouse
The Home Depot, Inc	165 shares	Mary B Jones	spouse
Merck & Co , Inc	33 shares	WilliamC Smith	trustee
Coca-Cola, Co	55 shares	John A Jones (as custodian)	self
		Robert D Jones	dependent child

To add additional rows to this table, place the cursor in the last column of the last row and press the TAB key on your keyboard

description of the property	quantity or percentage owned	owner(s) of the property	relationship to the employee

2. Provide a brief description of the employee's position or provide a citation to a statute that establishes the duties of the position.

3. Provide a detailed explanation of the basis for your conclusion that divestiture is reasonably necessary to comply with Federal ethics rules (including an indication as to the date on which the requirement to divest first applied).

4. Indicate how the property was acquired (e.g., purchase prior to appointment, inheritance after appointment, gift prior to appointment, etc.). If various items of property were acquired in different ways, be specific about how the various items were acquired (e.g., "Except for the Microsoft stock, the employee purchased all of the property before beginning government service in July 2001. The employee's spouse inherited the Microsoft Stock earlier this month on September 3, 2007.").

5. Please address all items below:

a. Have you enclosed a written request from the employee that contains an unconditional statement that the property owner(s) will divest the property? No ☐ Yes ☐

b. Have you enclosed the employee's most recent financial disclosure report or the equivalent? No ☐ Yes ☐

c. Is any other financial interest of the employee "similar or related" to the property being divested? No ☐ Yes ☐

d. Is any of the property held in a tax-deferred retirement plan? *Indicate which property is held in the plan in your response to Item 6.* No ☐ Yes ☐

e. Was any of the property acquired through an employee benefit plan (e.g., stock options, restricted stock, etc.)? *Indicate which property was acquired in this manner and the type of employee benefit plan in your response to Item 6.* No ☐ Yes ☐

f. If any of the property is held in a trust, have you enclosed the trust agreement? N/A ☐ No ☐ Yes ☐
Indicate which property is held in a trust in your response to Item 6.

6. Provide any additional information that you would like OGE to consider when processing the request. (Use this space to address the timing of the request, if it is submitted after the deadline for divestiture.)

7. Print this document and submit the signed original with all enclosures to the following address:
Director, U.S. Office of Government Ethics, 1201 New York Avenue, NW, Suite 500, Washington, DC 20005-3917.

SMOOTH SALES

A BEGINNER'S GUIDE TO CERTIFICATES OF DIVESTITURE

Introduction

If you are an executive branch employee of the Federal Government or plan to become one, at some point you may have to sell certain assets to avoid a conflict of interest or the appearance of a conflict. Under tax rules, the sale of an asset may cause you to have a taxable capital gain which must be reported to the Internal Revenue Service. However, to make it easier for you and your family to comply with ethics rules, the tax laws provide that before you sell your asset, the Director of the Office of Government Ethics (OGE) may issue a Certificate of Divestiture (called a CD) which will allow you to defer the capital gains tax. The CD does not eliminate the capital gains tax; it simply defers payment of the tax to some future date.

The Office of Government Ethics is the agency that administers the CD program. The Director of OGE issues CDs to employees through their designated agency ethics officials.

This pamphlet provides an overview of the CD program. It contains answers to some questions often asked by employees who are required to divest property because of a conflict of interest. This pamphlet does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should consult your designated agency ethics official.

Frequently Asked Questions

Can I get a CD any time I sell property?

No. A CD can be obtained only if:

- ☐ you have not yet sold the property;
- ☐ the sale is required to eliminate or prevent a conflict of interest;
- ☐ there would be a capital gain; and
- ☐ the request is submitted through your designated agency ethics official and approved by the Director of OGE.

Requests for CDs are considered on a case-by-case basis and may not always be approved. If your request involves a complicated situation, such as when the property to be sold is held in a trust, you should talk to your designated agency ethics official or OGE as soon as possible.

Who is eligible for a CD?

- ☐ Officers and employees of the executive branch of the Federal Government, except a person who is a "special Government employee," as defined in 18 U.S.C § 202;
- ☐ The spouse or minor or dependent child of such persons; and
- ☐ Under certain circumstances, a trustee holding property in a trust.

How do I apply for a CD?

☐ You must make a written request to your designated agency ethics official that includes a commitment to divest within a specified time period.

☐ Your designated agency ethics official then sends your request to the Director of OGE with:

- 1 a description of the property to be sold;
- 2 a statement from your designated agency ethics official indicating that the divestiture is necessary; and
- 3 if you file a financial disclosure report, a copy of your report. If you do not file a financial disclosure report, your designated agency ethics official must submit a memorandum that contains the information required to be disclosed in such a report.

What are the time requirements for requesting a CD?

- ☐ If you are divesting property because of an ethics agreement, your designated agency ethics official must submit your request and the required materials to OGE within three months of the date of the ethics agreement.
- ☐ If you are selling property required to be divested by statute, regulation, or executive order, your designated agency ethics official must submit your request and the required materials to OGE within

three months and ten days after the requirement becomes applicable.

What should I do once I receive the CD?

You must sell the property described in the CD within the required time frame and reinvest in so-called “permitted property” within 60 days, including the date of sale. Keep the Certificate and file it with IRS Form 8824 along with your Federal income tax return for the year in which the sale took place.

In what “permitted property” must I reinvest?

- ☐ United States obligations, such as Treasury bills, bonds, and notes; or
- ☐ open-end diversified mutual funds.

Note that when you sell permitted property or a United States obligation matures, you will incur the capital gains tax that was deferred.

Where can I learn more about CDs?

You can consult with your designated agency ethics official or OGE

with any questions regarding CDs or the CD program. However, since your agency ethics official and OGE cannot provide you with tax advice, you should ask your personal tax advisor, accountant, or attorney if you have questions about the tax implications of a CD. They can find detailed information at:

- ☐ Section 1043 of the Internal Revenue Code of 1986; and
- ☐ Regulations starting at 5 C.F.R. § 2634.1001.

SMOOTH SALES

A BEGINNER’S GUIDE TO CERTIFICATES OF DIVESTITURE



U.S. Office of Government Ethics

From: [Fugh, Justina](#)
To: [Jackson, Ryan](#)
Subject: RE: Hello again from EPA Ethics!
Date: Tuesday, June 25, 2019 10:49:00 AM

Hi Ryan,

Yeah, I'm in the office today but was (b) (6)

. Today is the OGC picnic (lord help me) so I'll be out of pocket from 12 to about 2 or 2:30. But then I'm back. I need to (b) (6), (b) (5)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Jackson, Ryan
Sent: Tuesday, June 25, 2019 10:41 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Fwd: Hello again from EPA Ethics!

(b) (5)

Are you in today?

Sent from my iPad

Begin forwarded message:

From: Ken McQueen (b) (6)
Date: June 23, 2019 at 10:25:48 AM CDT
To: "Fugh, Justina" <Fugh.Justina@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: RE: Hello again from EPA Ethics!

Justina,

I got your VM, I have been (b) (6), so I'm trying to catch up on emails today.

(b) (6)

(b) (6)

[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

(b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Wednesday, June 19, 2019 6:35 PM

To: Ken McQueen (b) (6)

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: Hello again from EPA Ethics!

Hi there,

I left you a voice mail message but am following up with an email. I'll be taking a couple of days off so will return to the office on Monday. But I will be checking email periodically, so we can communicate that way if need be.

Earlier today, I updated Ryan Jackson, copied here, on our recent conversation. I indicated to him that you do (b) (5), (b) (6)

[REDACTED]

[REDACTED] Well, that answer depends on whether your stock ownership exceeds the regulatory exemption levels and what you decide to do with your ownership interests.

- If you own less than \$15,000 worth of publicly traded stock in any company, you could still work on specific party matters that involve that company;
- If you own less than \$25,000 worth of publicly traded stock in any company, you can still work on particular matters of general applicability

that affect the sector;

- If you own any stock options, vested or unvested, then you don't qualify for the regulatory exemptions anyway.
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[REDACTED] If you will get any capital gains, then I've explained that you should wait until we secure a certificate of divestiture (see attached pamphlet) that will allow you to defer the tax consequences. If, however, you will not get any capital gain, or the assets are already in a tax deferred account, then we can't obtain a CD for you.

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From: [Fugh, Justina](#)
To: [Jackson, Ryan](#)
Subject: RE: Hello again from EPA Ethics!
Date: Monday, July 15, 2019 4:21:00 PM
Attachments: [RE Hello again from EPA Ethics!.msg](#)

Hi,

(b) (6) Here's the
document I think you wanted. (b) (6), (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Jackson, Ryan
Sent: Monday, July 15, 2019 10:17 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Hello again from EPA Ethics!

Will you reforward to me your analysis based on Ken's email below?

I'm having trouble finding it and specifically I would like to remind myself of the answer on (b) (6),
(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Ken McQueen (b) (6)

Sent: Sunday, June 23, 2019 11:26 AM
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[REDACTED]

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- If you own less than \$15,000 worth of publicly traded stock in any company, you could

still work on specific party matters that involve that company;

- If you own less than \$25,000 worth of publicly traded stock in any company, you can still work on particular matters of general applicability that affect the sector;
- If you own any stock options, vested or unvested, then you don't qualify for the regulatory exemptions anyway.
- If you exceed the regulatory thresholds and still want to (b) (6), (b) (5)

- If you will get any capital gains, then I've explained that you should wait until we secure a certificate of divestiture (see attached pamphlet) that will allow you to defer the tax consequences. If, however, you will not get any capital gain, or the assets are already in a tax deferred account, then we can't obtain a CD for you.

So the next step is for you to tell me, please, what you will do with (b) (6). That information will help us provide you and Ryan with a best guess as to how to frame a recusal statement for you.

Thanks in advance,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Mosley, Ferne](#); [Griffo, Shannon](#)
Subject: RE: Ken McQueen (RA Region 6)
Date: Sunday, June 09, 2019 2:04:00 AM

Dang it, I really should proofread more carefully this late at night. See the revised paragraph below.

From: Fugh, Justina
Sent: Sunday, June 09, 2019 1:53 AM
To: Mosley, Ferne <mosley.ferne@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Ken McQueen (RA Region 6)

Hi there,

On Friday, I finally got to talk to Ken McQueen, who is the Administrator's pick to be the new Regional Administrator in Region 6. (b) (5), (b) (6)

[REDACTED]

Justina

From: Fugh, Justina
Sent: Sunday, June 09, 2019 1:45 AM
To: Ken McQueen (b) (6)
Subject: Greetings from EPA Ethics!

Hi there,

Thanks for talking to me on Friday. It was a pleasure to chat with you, and I'm sorry that this note took a little longer to get to you than I had hoped. As I explained, I'm here to help explain the ethics rules that will apply to you should you join EPA as the Regional Administrator in Region 6, which is a non-career SES position. Generally speaking, you'll be subject to two interrelated but different ethical constructs: (1) the federal ethics laws and regulations, and (2) the Trump Ethics Pledge as set forth by Executive Order 13,770 (see attached). This note will provide you with the broad brush strokes of what I envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

- You will be required to fill out a public financial disclosure report to help us to ascertain

your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, stock options, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a wretched and exacting document that you will fill out electronically. To give you an idea of what we'll be asking, I've attached a paper version, but we're not yet asking you to fill it out.

- From our discussion, you are (b) (6)

[REDACTED]

I indicated to you that one option is to divest, which can be accomplished through a certificate of divestiture that we would seek after you become an employee. This CD will allow an employee (not a prospective employee) to sell the conflicting property that would have generated a capital gain, buy something else (likely a diversified mutual fund) and defer any capital gain tax consequences. There are limitations to this remedy, though, such as the fact that it won't apply to your underwater options. I've attached a pamphlet that explains the program a little more.

- You indicated that you are (b) (6)

[REDACTED]

- [REDACTED]

- Given your description of your assets, I anticipate that you will present some financial conflicts that we will have to resolve, either through recusal (areas in which you will not be permitted to participate) or divestiture/forfeit of the options. We'll obviously need to talk further and carefully about how to proceed. I'm only letting you know that I anticipate an issue, not yet suggesting the path forward.

TRUMP ETHICS PLEDGE

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we have to go back two years, which means that you have two entities to mention: the State of New Mexico and Kenergy Consulting LLC, as well as any consulting clients of yours. You do not have any fiduciary board positions and are not a federally registered lobbyist.
- Under the pledge, you will be restricted for two years (from the date you join EPA) from

participating personally and substantially in any particular matter that involves Kenergy Consulting LLC or any of your clients as a party or in which they represent a party. You will not be permitted to meet with Kenergy Consulting or any of your clients or interact with them in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which Kenergy Consulting or any of your clients is a party or represents a party. You will also not be able to attend any meeting at which anyone representing Kenergy Consulting or any of your clients is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides the representative of Kenergy Consulting or any of your clients.

- With regard to your former state employment, please note that this provision of the pledge does not apply to states or local governments. So, for New Mexico, we will instead rely on the federal impartiality standards that establish a one year cooling off period with the state. Because the RA in Region 6 must interact with New Mexico, which is one of the states in the region, we anticipate that will write an impartiality determination to allow you to participate in New Mexico matters. We have done this sort of impartiality determination for other Regional Administrators, including Anne Idsal.

RECUSALS

- I anticipate that your recusal statement will address New Mexico (to some extent, until the impartiality determination is issued), Kenergy Consulting LLC, and any clients of Kenergy. In addition, we will have to address your ownership interests and the financial conflicts.

That's my quick overview, but I tried not to burden you with attachments or citations. I can provide you more information if you want, though, so just ask!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Chancellor, Erin](#)
Cc: [Gray, David](#)
Subject: RE: Ken McQueen
Date: Tuesday, July 16, 2019 2:34:00 PM

Hi there,

Well, Mr. McQueen's situation is in a bit of flux. We anticipate that (b) (5), (b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

- (b) (6)
- [REDACTED]
- [REDACTED]
 - [REDACTED]

Not very helpful, I know, but we're still unsure about his finances or even the names of his clients. We're going to have him start filling out the financial disclosure report now.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Chancellor, Erin
Sent: Tuesday, July 16, 2019 1:19 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Gray, David <gray.david@epa.gov>
Subject: Ken McQueen

Hey Justina,

Hope all is well in DC! Is it possible for David and I to please get Ken's recusals so we know what to exclude from his briefing packet?

Tell Maury and Connie hey!

Thanks,

Erin E. Chancellor

Chief of Staff | Office of the Regional Administrator

U.S. EPA Region 6

[214.665.2112](tel:214.665.2112) (o) | (b) (6) (c)

chancellor.erin@epa.gov

From: [Gray, David](#)
To: [Clarke, Victoria](#); [Payne, James](#); [Mosley, Ferne](#); [Leddton, Terry](#); [Rucki, Thomas](#)
Cc: [Fugh, Justina](#); [Smith, Suzanne](#)
Subject: RE: New employee Ethic Briefing
Date: Thursday, August 08, 2019 10:21:26 AM
Attachments: [McQueen Ethics Pledge signed 2019.pdf](#)

Signed Ethics Pledge attached.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, August 1, 2019 8:31 AM
To: Payne, James <payne.james@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>; Gray, David <gray.david@epa.gov>; Leddon, Terry <Leddon.Terry@epa.gov>; Rucki, Thomas <Rucki.Thomas@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: RE: New employee Ethic Briefing

Good morning!

In anticipation of the briefing, we thought it might be prudent to provide you with the materials Mr. McQueen will need. Attached, you can find our briefing packet, which includes our briefing, a Stock Act Notification form, a copy of EO 13770, and the Trump Pledge. You can have Mr. McQueen sign the Trump pledge and then send us a copy for our files.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Payne, James
Sent: Tuesday, July 30, 2019 9:53 PM
To: Mosley, Ferne <mosley.ferne@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Gray, David <gray.david@epa.gov>; Leddon, Terry <[Leddon.Terry@epa.gov](mailto:Leddton.Terry@epa.gov)>; Rucki, Thomas <Rucki.Thomas@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>
Subject: RE: New employee Ethic Briefing

On confidential basis, adding attorneys Terry and Tom as they assist on regional ethics matters.

From: Mosley, Ferne
Sent: Monday, July 29, 2019 8:36 AM

To: Clarke, Victoria <clarke.victoria@epa.gov>; Gray, David <gray.david@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James <payne.james@epa.gov>
Subject: RE: New employee Ethic Briefing

Hello, likewise for me.

Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: Clarke, Victoria
Sent: Monday, July 29, 2019 9:31 AM
To: Gray, David <gray.david@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James <payne.james@epa.gov>
Subject: RE: New employee Ethic Briefing

Hi David!

My schedule is largely up to date. My Monday, Wednesday, and Friday are the most flexible. For Tuesday and Thursday, early-mid afternoon are best.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Gray, David
Sent: Monday, July 29, 2019 9:16 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James <payne.james@epa.gov>
Subject: New employee Ethic Briefing

Good morning,

Justina asked that we set up a new employee ethics briefing for our new Regional Administrator. I'd

like arrange for this briefing sooner versus later. Would you advise me to your availability during the week of August 5th? Thank you.

NEW EMPLOYEE ETHICS BRIEFING

- In his first week, please ensure that your new RA is scheduled for a new employee ethics briefing with OGC/Ethics. If you want to schedule that session in his first few days, then please contact Ferne Mosley and Victoria Clarke. They can do the one-hour briefing together and also ensure that Mr. McQueen signs the Trump Ethics Pledge.

David

David Gray

Deputy Regional Administrator

EPA Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma and Texas)

(214) 665-2100 general

(214) 665-8120 direct

(b) (6) cell

gray.david@epa.gov



ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.
2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.
3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.
8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.

Signature

Kenley H. McQueen, Jr.

Date

August 5, 20 *19*

Print or type your full name (last, first, middle)

Kenley H. McQueen, Jr.

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Cc: [Clarke, Victoria](#); [Mosley, Ferne](#)
Subject: RE: note that I sent to R6 about their new RA
Date: Tuesday, July 30, 2019 10:59:00 AM

Hi Shannon,

You're right ... (b) (5)

(b) (5) The cc's are correct, by the way, and I have no other comments on the memo. Happy to sign today. When Victoria and Ferne do the new employee briefing, get him to (b) (6) (since we don't have his 278, it's hard to know). You'll have my signature on the cover page and you can make changes to that paragraph if need be.

THANKS!

Justina

From: Griffo, Shannon
Sent: Monday, July 29, 2019 3:19 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Subject: RE: note that I sent to R6 about their new RA

Attached is a draft impartiality determination for Ken McQueen -

- Justina will review, make changes, and sign before she leaves. (b) (5)

(b) (5)

- (b) (5)

(b) (5)

Thanks,
Shannon

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina
Sent: Friday, July 26, 2019 4:22 PM
To: OGC Ethics <OGC_Ethics@epa.gov>
Subject: note that I sent to R6 about their new RA

Hi there,

I expect that the new RA in Region 6 will start while I'm on vacation, so I talked to Victoria about what will need to happen:

- New employee training – I asked the Region to contact Ferne and Victoria so that they can do it together or sort out who will do it. For RAs, I've tried to do them by Skype, but conference calls also work. Be sure to get his signature on the Trump ethics pledge. (b) (5)
[REDACTED]
[REDACTED]
- Impartiality determination – He's going to need one to work with New Mexico, his former employer and a state in Region 6. I've asked Victoria to work with Shannon on this. It'll need to be signed by me (but not dated until after he starts) or you'll need Cozad's signature on it.
- Certificate of Divestiture – Victoria and Margaret are on this. (b) (5)
[REDACTED]
[REDACTED] Contact person at OGE is Elaine Newton at (b) (6), and you will send it to cd@oge.gov
- New Entrant 278 – Margaret assigned him one using his personal email address but he hasn't started it yet. (b) (5). I don't know who they are, and they will need to be included in his recusal statement
- (b) (5)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I'm inclined to ask Victoria to shepherd this project but ask that Ferne and Shannon be available to help out and lend support as needed. Okay with everyone?

Justina

From: Fugh, Justina

Sent: Friday, July 26, 2019 4:08 PM

To: Payne, James <payne.james@epa.gov>; Gray, David <gray.david@epa.gov>

Cc: Leddon, Terry <Leddon.Terry@epa.gov>

Subject: your new RA

Hi there,

I'm going to be (b) (6) but realize that you are expecting your new RA, Ken McQueen, very soon, perhaps as early as August 5 (effective date of 8/4/19). I am writing to let you know that OGC/Ethics has been working with Mr. McQueen already. Here is my quick outline of his ethics situation:

NEW EMPLOYEE ETHICS BRIEFING

- In his first week, please ensure that your new RA is scheduled for a new employee ethics briefing with OGC/Ethics. If you want to schedule that session in his first few days, then please contact Ferne Mosley and Victoria Clarke. They can do the one-hour briefing together and also ensure that Mr. McQueen signs the Trump Ethics Pledge.

LOSS OF IMPARTIALITY

- OGC/Ethics will write an impartiality determination to permit the new RA to work with his former employer, the state of New Mexico. That should be ready to go on his first day, so you will be able to brief him on specific party matters in which NM is a party.

FINANCIAL INTERESTS: Anticipated Issues

- Prior to joining EPA, he intends to (b) (6), (b) (5)
[REDACTED]
- After he joins EPA, (b) (5), (b) (6)
[REDACTED]
- He can be briefed on matters of general applicability that affect the downstream petroleum sector.

RECUSAL STATEMENT

- OGC/Ethics will also write the recusal statement but because Mr. McQueen's assets will change, we will (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- In addition to the financial assets, we will include any former employers and former clients on his recusal list: Kenergy and its clients to whom he provided consulting services, plus Sonora Energy Partners.

I hope this is helpful to you!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

[illegible]

From: [Griffo, Shannon](#)
To: [Leddin, Terry](#); [Fugh, Justina](#)
Cc: [Payne, James](#)
Subject: RE: status update on Ken McQueen recusals
Date: Thursday, August 15, 2019 8:27:35 AM
Attachments: [Ken McQueen draft recusal statement 8_15_19.docx](#)

Thanks Terry. I went ahead and updated the impartiality section accordingly. If the Region identifies a matter later that he participated in while at EMNRD, then we can update the recusal. But it sounds unlikely that anything should arise.

I've also updated the financial conflicts of interest section. Ken has confirmed he (b) (6), so he is NO longer recused from (b) (6) and the upstream sector. Therefore, he can be briefed and participate in discussions about that (b) (7)(A) you asked about yesterday. However, he is still recused from Williams and the midstream issues (processing and transportation).

I also added the two former clients he identified.

We are still waiting for information about his (b) (6), and will continue to check his 278 to see if anything else needs to be added. But attached is the updated draft recusal based on Ken's latest response. I thought it would be helpful for folks to see the latest.

I'll keep you posted on any other updates. Stay tuned!

Thanks,
Shannon

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Leddon, Terry <Leddin.Terry@epa.gov>
Sent: Wednesday, August 14, 2019 1:35 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>; Payne, James <payne.james@epa.gov>
Subject: Re: status update on Ken McQueen recusals

Our UIC program says there are no UIC matters he should be recused from.

Sent from my iPhone

On Aug 14, 2019, at 12:41 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

I have sent a detailed note to Ken McQueen about the information we still need in order to finalize a recusal statement for him. See below.

Justina

From: Fugh, Justina

Sent: Wednesday, August 14, 2019 12:38 PM

To: McQueen, Ken <McQueen.Ken@epa.gov>

Subject: Yoo hoo! your pesky ethics lawyer wants to say hello!

Hi there,

Belated welcome to EPA! I was on vacation when you arrived, but I know that you met with two members of Team Ethics for your new employee training. As you learned, you need to ensure that you are properly recused from working on particular matters that present conflicts or pledge issues for you. A recusal statement makes clear to your staff and others what they can do to assist you. But we can't draft that statement until we hear *from you* about the specifics.

Here is what we need from you:

[illegible]

Justina, Some updates in red for you.

Hi there,

Belated welcome to EPA! I was on vacation when you arrived, but I know that you met with two members of Team Ethics for your new employee training. As you learned, you need to ensure that you are properly recused from working on particular matters that present conflicts or pledge issues for you. A recusal statement makes clear to your staff and others what they can do to assist you. But we can't draft that statement until we hear *from you* about the specifics.

[illegible]

(b) (6), (b) (5)	
<i>FOR YOUR CERTIFICATE OF DIVESTITURE</i>	
Submission of the wretched OGE 278 in INTEGRITY	Let us know if you need any help.

As you know, until you receive the certificate of divestiture for (b) (6), you are recused from working on any particular matter that affects (b) (6) as a specific party and the midstream oil and gas sector. Until we have confirmation that you have (b) (6), you are also recused from working on any particular matter that affects (b) (6) and the upstream oil and gas sector. We have therefore advised the Region that you cannot be briefed on nor participate in (b) (6)

Happy to have you on board!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Ken McQueen](#)
Cc: [Jackson, Ryan](#)
Subject: A quick summary, for your reference
Date: Wednesday, July 17, 2019 1:41:00 PM

Hi there,
I thought it might be useful for you to get a quick summary of what EPA Team Ethics needs.
We really want to help bring you to EPA as soon as possible!

[illegible]

<div>(b) (6), (b) (5)</div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
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Cheers,
justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Chiang, I-Jung](#)
Cc: [Griffo, Shannon](#)
Subject: update on Mr. McQueen
Date: Thursday, August 15, 2019 10:25:00 AM

Hi I-Jung,

Please note that Mr. McQueen is *no longer recused* from working on WPX or the upstream oil and gas sector. Therefore, he can be briefed and participate in discussions about that (b) (7)(A) [REDACTED] the Region asked about yesterday. He is, however, still recused from Williams and any particular matters involving the midstream oil and gas sector (processing and transportation).

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Mosley, Ferne](#)
To: [Griffo, Shannon](#); [Clarke, Victoria](#)
Cc: [Ross, Margaret](#)
Subject: RE: draft McQueen recusal
Date: Monday, August 05, 2019 12:50:05 PM

Hi, let's go over the plan for his briefing tomorrow at the staff meeting.

Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, August 2, 2019 12:29 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Subject: draft McQueen recusal

Attached is a draft recusal statement to get us started, but we need some more information from Ken. I checked again this morning, and he hasn't started his New Entrant Report.

(b) (5)

Thanks,
Shannon

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, July 30, 2019 5:57 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
Subject: mcqueen impartiality determination

Here's the last version, reformatted a little so that the cc's were not the only thing on the last page. I printed out an original and signed it, and left it on my conference table.

From: Griffo, Shannon

Sent: Monday, July 29, 2019 3:19 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>

Subject: RE: note that I sent to R6 about their new RA

Attached is a draft impartiality determination for Ken McQueen -

- Justina will review, make changes, and sign before she leaves. (b) (5)

[REDACTED]

- (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

Thanks,
Shannon

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina

Sent: Friday, July 26, 2019 4:22 PM

To: OGC Ethics <OGC_Ethics@epa.gov>

Subject: note that I sent to R6 about their new RA

Hi there,

I expect that the new RA in Region 6 will start while I'm on vacation, so I talked to Victoria about what will need to happen:

- New employee training – I asked the Region to contact Ferne and Victoria so that they can do it together or sort out who will do it. For RAs, I've tried to do them by Skype, but conference calls also work. Be sure to get his signature on the Trump ethics pledge. (b) (5)

- Impartiality determination – He's going to need one to work with New Mexico, his former employer and a state in Region 6. I've asked Victoria to work with Shannon on this. It'll need to be signed by me (but not dated until after he starts) or you'll need Cozad's signature on it.

- Certificate of Divestiture – Victoria and Margaret are on this. (b) (5)

Contact person at OGE is Elaine Newton at (b) (6), and you will send it to cd@oge.gov

- New Entrant 278 – Margaret assigned him one using his personal email address but he hasn't started it yet. (b) (5). I don't know who they are, and they will need to be included in his recusal statement

- (b) (5)

I'm inclined to ask Victoria to shepherd this project but ask that Ferne and Shannon be available to help out and lend support as needed. Okay with everyone?

Justina

From: Fugh, Justina

Sent: Friday, July 26, 2019 4:08 PM

To: Payne, James <payne.james@epa.gov>; Gray, David <gray.david@epa.gov>

Cc: Leddon, Terry <Leddon.Terry@epa.gov>

Subject: your new RA

Hi there,

I'm going to be (b) (6) but realize that you are expecting your new RA, Ken McQueen, very soon, perhaps as early as August 5 (effective date of 8/4/19). I am writing to let you know that OGC/Ethics has been working with Mr. McQueen already. Here is

my quick outline of his ethics situation:

NEW EMPLOYEE ETHICS BRIEFING

- In his first week, please ensure that your new RA is scheduled for a new employee ethics briefing with OGC/Ethics. If you want to schedule that session in his first few days, then please contact Ferne Mosley and Victoria Clarke. They can do the one-hour briefing together and also ensure that Mr. McQueen signs the Trump Ethics Pledge.

LOSS OF IMPARTIALITY

- OGC/Ethics will write an impartiality determination to permit the new RA to work with his former employer, the state of New Mexico. That should be ready to go on his first day, so you will be able to brief him on specific party matters in which NM is a party.

FINANCIAL INTERESTS: Anticipated Issues

- Prior to joining EPA, he intends to (b) (5), (b) (6)
[REDACTED]
- After he joins EPA, (b) (6), (b) (5)
[REDACTED]
- He can be briefed on matters of general applicability that affect the downstream petroleum sector.

RECUSAL STATEMENT

- OGC/Ethics will also write the recusal statement but because Mr. McQueen's assets will change, (b) (5)
[REDACTED]
- In addition to the financial assets, we will include any former employers and former clients on his recusal list: Kenergy and its clients to whom he provided consulting services, plus Sonora Energy Partners.

I hope this is helpful to you!
justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Griffo, Shannon](#)
To: [McQueen, Ken](#)
Cc: [Gray, David](#); [Payne, James](#); [Fugh, Justina](#); [Leddin, Terry](#)
Subject: Your Signed Impartiality Determination (and draft recusal statement)
Date: Thursday, August 08, 2019 2:51:00 PM
Attachments: [Ken McQueen Signed Impartiality Determination 8 5 19.pdf](#)
[Ken McQueen draft recusal statement 8 8 19.docx](#)

Hi Ken,

It was a pleasure speaking with you yesterday. As promised, attached is the signed impartiality determination that permits you to work on specific party matters involving the State of New Mexico, provided that you did not work on those matters personally and substantially while employed with the State.

I've also attached a draft recusal statement for your consideration. We still have some gaps to fill in, but I thought it would be helpful for folks to see a draft. Feel free to provide me with the missing information or work with the Region to address our comments. I know you are just getting started on your financial disclosure report, so I'll keep an eye out for that as well to ensure we've covered everything in the recusal.

In the meantime, please don't hesitate to reach out if you have any other questions.

Thanks!
Shannon

Shannon Griffo
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U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

AUG - 5 2019

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of New Mexico

FROM: Justina Fugh *justina fugh*
Alternate Designated Agency Ethics Official

TO: Ken McQueen
Regional Administrator
Region 6

As the Regional Administrator for Region 6 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of New Mexico. Within the last year, prior to being selected for this position, you served as Cabinet Secretary of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your State of New Mexico employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of New Mexico.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Senior Advisor for Water, you have a "covered relationship" with the State of New Mexico pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from EMNRD, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New Mexico is

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of Region 6 and part of the Agency's political team. Your area of responsibility includes New Mexico, as well as Arkansas, Louisiana, Oklahoma, and Texas. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including New Mexico, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of New Mexico with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with EMNRD. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From 2016 through 2018, you served as Cabinet Secretary for the New Mexico Energy, Minerals and Natural Resources Department. In this significant leadership role, you led the Department responsible for protecting and conserving New Mexico's natural and energy resources, and provided policy direction for EMNRD and its six divisions (Oil Conservation, Energy Conservation and Management, Mining and Minerals, State Forestry, State Parks, and Administrative Services). Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for EMNRD. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and

enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of New Mexico. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – New Mexico will constitute a significant portion of your portfolio since your area of responsibility covers Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. In your role as Regional Administrator, you are expected to communicate freely with states in Region 6, including New Mexico.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for EMNRD that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of New Mexico, but not on the very same specific party matters on which you worked on personally and substantially while employed by EMNRD. With respect to those particular matters involving New Mexico as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of New Mexico with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New Mexico. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as

voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: David Gray, Deputy Regional Administrator, Region 6
James Payne, Regional Counsel, Region 6
Erin E. Chancellor, Chief of Staff, Region 6
Terry Leddon, Regional Ethics Counsel, Region 6